




# **Headquarters Policy Flash**

**FLASH 2002-38**

DATE: December 2, 2002  
TO: Procurement Directors  
FROM: Office of Procurement and Assistance Policy, ME-61  
Office of Procurement and Assistance Management

SUBJECT: 1. Project Labor Agreements  
2. New Acquisition Letter, AL 2002-08, dated December 02, 2002  
3. Reactivation of Financial Assistance Letter (FAL) 2001-02,  
dated July 30, 2001.

SUMMARY: This flash transmits a new Acquisition Letter to provide guidance for the application to M&O and other major facilities contractors, contracts for construction management services, and contract clauses pending formal amendments to the Department of Energy Acquisition Regulation (DEAR). This flash also lifts the suspension of FAL 2001-02 which had been issued to provide financial assistance guidance regarding PLAs (Ref: Flash 2002-08, dated 02/12/02).



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**1. Project Labor Agreements**

Executive Order (E.O.) 13202, *Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects*, as amended by E.O. 13208, was issued to require that agencies and their construction managers remain neutral towards the use of PLAs for all new construction projects.

E.O. 13202 was issued to improve the internal management of the Executive branch by:

- ✓ promoting and ensuring open competition of Federal and federally funded or assisted construction projects;
- ✓ maintaining Government neutrality towards Government contractors' labor relations on Federal and federally funded or assisted construction projects;
- ✓ reducing construction costs to the Government and to the taxpayers;
- ✓ expanding job opportunities, especially for small and disadvantaged businesses;
- ✓ preventing discrimination against Government contractors or their employees based upon labor affiliation or lack thereof; and
- ✓ preventing the inefficiency that may result from the disruption of a previously established contractual relationship in particular cases.

The Executive Orders were implemented in the Federal Acquisition Regulation (FAR) interim rule published in the Federal Register on May 16, 2001, 66 FR 27414, as part of FAC 97-26. However, as a result of an injunction against the E.O. and pending litigation to resolve the dispute, another interim rule was published in the Federal Register at 67 FR 10527, March 7, 2002, staying the rule until final judicial resolution. On July 12, 2002, a decision of the U.S. Court of Appeals for the District of Columbia Circuit, reversed the judgment of the District Court and vacated the injunction. As a result, FAC 2001-10, published November 22, 2002 (67 FR 70516), terminated the stay and adopted the May 16, 2001 interim rule as final without change. The rule is effective November 22, 2002.

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The FAR amendments at 36.202(d) resulting from FAC 2001-10 specify that agencies can not require or prohibit offerors, contractors, or subcontractors from entering into or adhering to agreements with one or more labor organizations. Agency heads are permitted to exempt a project from the requirements of the E.O. under special circumstances. FAR 36.202(d) also provides for the exemption of a project governed by a project labor agreement in place as of 02/17/01, which had a construction contract awarded as of 2/17/01. The FAR amendments, however, did not provide contract clauses to implement the changes.

**2. New Acquisition Letter, AL 2002-08, dated December 02, 2002**

A new Acquisition Letter was developed to provide additional guidance regarding the Federal implementation's impact on DOE contract awards. The clauses should be inserted in all solicitations/awards issued after the effective date of the final rule.

Guidance in the new Acquisition Letter includes:

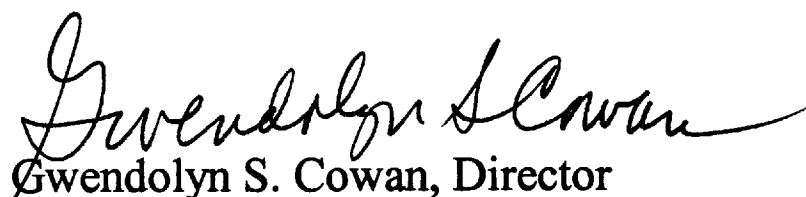
- ✓ Application of the E.O.s to the activities of the Department of Energy's (DOE's) major facilities contractors, including DOE's M&O contractors.
- ✓ Application of the E.O.s for major facilities contracts already awarded.
- ✓ Process for requesting exemptions.
- ✓ Model clauses

For questions related to the Acquisition Letter, contact Bob Webb at (202) 586-8264 or via e-mail at [robert.webb@pr.doe.gov](mailto:robert.webb@pr.doe.gov)

**3. Reactivation of Financial Assistance Letter 2001-02, dated July 30, 2001.**

For questions related to the Financial Assistance Letter, contact Trudy Wood at (202) 586-5625 or via e-mail at [trudy.wood@pr.doe.gov](mailto:trudy.wood@pr.doe.gov)

This AL has been reviewed by the Field Management Council and approved by the Secretary for release.

  
Gwendolyn S. Cowan, Director

cc:  
PPAG Members  
FAAC Members